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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/810,911
Filing Date: March 26, 2004
Appellant(s): STEPHENSON ET AL.

Daniel L. Girdwood
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 04/28/2008 appealing from the Office action mailed 02/11/2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,475,087	COLE	11-2002
2003/0157978	ENGLMAN	8-2003

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cole (US 6475087) in view of Englman (US 2003/0157978).

In regards to claims 1, 2, 5 and 6, Cole discloses a gaming machine with a cabinet defining an internal space with a moveably mounted door that has an enlarged opening (2:16-32 and fig 2) and a sheet mounted to the door and extending across a portion of the opening with a portion being see through (fig 1). Cole further discloses that the replaceable door subassembly is advantageous in that it reduces the costs associated with modifying the games within the machine (1:40-49). Cole lacks disclosing a cross member across the opening.

In related prior art, Englman discloses a gaming system with two video displays with a dividing cross member (fig 1) where the upper display is for bonus information and either the upper or lower display may be a mechanical reel or video display device (par 25). One skilled in the art would recognize the advantages of providing more

displays to provide information and entertainment to the player in order to keep the player interested in the game while separating the displays with a cross member to avoid confusing the player by merging the displays.

Therefore it would have been obvious to one skilled in the art at the time of the invention to have modified Cole in view of Englman to have included a second display with a separating cross member in order to provide more information and entertainment to the player while not confusing the player by merging the displays. The combination made does not explicitly disclose that the cross member would be removable and vertically adjustable.

However, in order to attach a cross member in the system of the combination of Cole and Englman one skilled in the art would recognize that there are limited options in how to attach the cross member: fixable attachment of the member to the door, fixable attachment to the replaceable display sheet or mount of Cole, removable attachment to the door, or removable attachment to the replaceable display sheet or mount of Cole. As Cole already teaches that it is desirable to have a display sheet or mount that is replaceable and removable in order to ease the modification of a gaming machine, it would have been obvious to one skilled in the art at the time that providing removable attachment cross members would be desirable and with only two places to choose from it would be obvious to try attaching the cross member to the display sheet or mount.

In regards to claims 3 and 4, Cole discloses that a portion of the sheet is transparent and a portion reduces the transmissibility of light (6:44-53 and fig 1).

In regards to claim 7, the combination made does not disclose that the bonus display includes progressive information; however, as the display of Englman provides bonus information and a progressive is a type of bonus it would have been obvious to one skilled in the art to replace the bonus information of the combination with a progressive bonus instead as such a modification would have been mere replacement of one bonus game type for another.

In regards to claims 8, 9, 10, 15, 16, 18-25, Cole discloses a door having an inner side facing the internal space (fig 2) with mounting structure to hold replaceable screens in place (figs 2 and 5, element 74) including elements to secure the display sheet to the door (7:2-4). Cole further discloses that the replaceable door subassembly is advantageous in that it reduces the costs associated with modifying the games within the machine (1:40-49). Cole lacks in explicitly disclosing a bezel with an enlarged opening with the cross member secured thereto or that the door and cross member include includes beveled outer surfaces.

In related prior art, Englman discloses a gaming system with two game display devices that may be mechanical or video gaming displays (par 25) with beveled outer surfaces adjacent to the vertical side edges and a cross member with beveled opposite end portions that fit against the beveled outer door surfaces (fig 1). One skilled in the art would recognize the advantages of two displays to provide more visual entertainment as well as a smooth beveled surface in providing an enticing look to attract players.

Therefore it would have been obvious to one skilled in the art at the time of the invention to have modified Cole in view of Englman to have included the dual displays with beveled surfaces as trim in order to provide an attractive look to players.

The combination made lacks an inner mounting plate or bezel that the cross bar is attached thereto. However, Cole already discloses a system intended to provide an easily customizable game cabinet to switch between types of games, in light of the teachings of the second gaming devices Englman it would have been obvious to try a mounting plate or bezel attached to the door to swap display types in lieu of replacing the entire door assembly and in order to attach a cross member, one skilled in the art would recognize that there are limited options in how to attach the cross member: fixable attachment of the member to the door, fixable attachment to the replaceable display sheet or mount of Cole, removable attachment to the door, or removable attachment to the replaceable display sheet or mount of Cole. As Cole already teaches that it is desirable to have a display sheet or mount that is replaceable and removable in order to ease the modification of a gaming machine, it would have been obvious to one skilled in the art at the time that providing removable attachment cross members would be desirable and with only two places to choose from it would be obvious to try attaching the cross member to the display sheet or mount.

In regards to claim 11, Cole discloses a screen secured to the door across a substantial portion of the opening in the door (figs 1 and 2 and 2:16-32).

In regards to claim 12, the screen of Cole covers the display area (figs 1 and 2) and would inherently have to be adjacent to a display dividing cross member.

In regards to claims 13 and 14, Cole discloses that a portion of the sheet is transparent and a portion reduces the transmissibility of light (6:44-53 and fig 1).

In regards to claim 17, the combination made does not disclose that the bonus display includes progressive information; however, as the display of Engman provides bonus information and a progressive is a type of bonus it would have been obvious to one skilled in the art to replace the bonus information of the combination with a progressive bonus instead as such a modification would have been mere replacement of one bonus game type for another.

(10) Response to Argument

By way of background, examiner wishes to provide the interpretation and understanding of the structure of applicant's invention addressed in the rejection. A casino cabinet door is provided with a mounting plate attached to the interior of the door. Screens or displays may be attached to the mounting plate to provide game information or allow the viewing of internally mounted reel devices. A piece of trim, or cross member, is attached to the mounting plate to separate the two displays or screens. In order to adjust this cross member, it is unbolted from the plate, new holes are drilled or may have been pre-drilled and the cross bar is then bolted into the new position using the new holes. While this is technically vertically adjustable, it is not adjustable in the sense that a person at the gaming machine would be able to do so easily or without tools and access to the interior of the game machine. Accordingly

examiner uses the sense of the cross bar being removably affixed to the game cabinet rather than adjustable in the literal meaning.

Applicant's argues that Cole does not disclose a cross member, and states that examiner has admitted as such. Examiner agrees with this statement as Cole does not explicitly disclose a cross member. Applicant then argues that Englman does not disclose a detachable cross member. Examiner agrees that Englman is silent in regards to the manner of the attachment of the cross member. However, it is the combination of the references and their teachings that is relied upon by the examiner.

Cole teaches a gaming machine with a replaceable display mount that allows for the rapid changing of a game machine between electronic displays and reel system to facilitate game changes and hardware updates, but only discloses a single display or reel device in the game system.

Englman teaches a game system with two displays separated by a piece of trim to provide more information and entertainment to the player through the increased display area and states that either display may be a reel device or an electronic display. One of ordinary skill in the art at the time would have understood the advantages of providing more game display area to increase the entertainment value to the player and provide more information to the player.

When modifying Cole to incorporate the teachings of a second display, one skilled in the art would have been faced with the limited options of how to provide the separating trim between the display areas. The trim would only be able to be connected to the door or the mounting plate disclosed by Cole, and could be permanently or semi-

permanently attached to the door or the mounting plate. As Cole already teaches that it is desirable to have a game machine that is readily modifiable to ease updates and game replacement, one skilled in the art would have been motivated to choose a removable trim option as that would allow for the inclusion of new display elements in the device of Cole. With this motivation, one skilled in the art would have been left with the choice of semi-permanent attachment of trim to the door or the mounting plate. It would have been obvious to one of ordinary skill in the art at the time to try one of these two options and achieve the desired goal of Cole of a readily updatable and modifiable game machine enclosure, where it is obvious that some manner of fastener would be required to allow the trim to be adjusted to a new position in order to accommodate new, differently sized displays.

It therefore has been shown that the prior art had a suggestion and a motivation for making the combination and modification of Cole and Engلمان, and there was a reasonable expectation of success as one skilled in the art would have been more than capable of constructing the device taught by the references and such a device would have behaved as expected in permitting the rapid replacement and upgrading of game machine components.

In response to applicant's arguments concerning the Expert Declaration, the affiant states that applicant's invention fills a long felt need in the industry. In order to prove that there has been a long felt need, evidence must be included that shows the need has been a persistent one that was recognized by those of ordinary skill in the art (see *In re Gershon*, 372 F.2d 535, 152 USPQ 602 (CCPA 1967)), the long-felt need

must not have been satisfied by another before the invention by applicant (see *Newell Companies v. Kenney Mfg. Co.*, 864 F.2d 757, 9 USPQ2d 1417 (Fed. Cir. 1988)) and that the invention must in fact satisfy the long-felt need (see *In re Cavanagh*, 436 F.2d 491, 168 USPQ 466 (CCPA 1971)). The affiant provides no evidence that the need was persistent and recognized by those of ordinary skill in the art and even goes so far as to state that the industry was unaware of the problem (paragraph 10, last sentence). Such a statement is clearly contradictory to a long-felt need by the industry. Additionally, there has been no evidence provided that shows any prior unsuccessful attempts to solve the stated problem (see *Orthopedic Equipment Co. Inc. v. All Orthopedic Appliances, Inc.*, 707 F.2s 1376, 217 USPQ 1281 (Fed. Cir. 1983)).

The affiant further claims that the combination made by the examiner would not have been obvious to one of ordinary skill in the art. Examiner does not consider this opinion to be convincing in light of the lack of showing of the affiant's expertise in this particular area. Affiant has stated their expertise with providing game machines, which examiner interprets as sales and service, and management of a company, but has not provided evidence of their skill in the areas of gaming machine design and construction.

In regards to applicant's arguments concerning expectation of success, examiner respectfully disagrees. Applicant states that there is no expectation of success since the prior art does not teach an adjustable cross member. As examiner has shown, the prior teaches an adjustable gaming machine door assembly and that multiple display devices are desirable to game machine customers. In light of those teachings and the suggestion to make the game machines adjustable as disclosed by Cole, one skilled in

the art would have been motivated to make a display separator adjustable as well. Cross members are well known in the art as shown by Engلمان, and attaching such a cross member with bolts, glue, welds, nails, screws, tabs, etc. all produce the same expected result of affixing the cross member to the game machine with the methods differing in the ease of removal. One skilled in the art would readily recognize the results of affixing the cross member by bolt instead of a weld would allow for easier removal, replacement, or adjustment of the cross bar as suggested by adjustability of the gaming machine of Cole. Affiant's declaration does not refute that one skilled in the art would recognize the results of attaching a cross member by removable means; rather, it merely states that such a connection was untraditional.

In regards to applicant's new claims of commercial success, examiner wishes to point out that the affiant made no statement as to any commercial success as a result of applicant's invention. Furthermore, absolutely no evidence has been provided to support such a claim.

With respect to applicant's arguments that the references do not provide a specific suggestion or teaching to combine the prior art, KSR forecloses the argument that a *specific* teaching, suggestion, or motivation is required to support a finding of obviousness. See *Ex parte Smith*, --USPQ2d--, slip op. at 20, (Bd. Pat. App. & Interf. June 25, 2007) (citing *KSR*, 82 USPQ2d at 1396).

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon

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hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/David W Duffy/

Examiner, Art Unit 3714

Conferees:

/XUAN M. THAI/

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/Gene Kim/

Supervisory Patent Examiner, Art Unit 3711